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# CORPORATION JOURNAL

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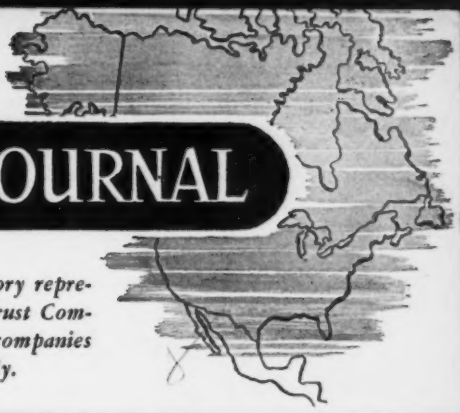

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Vol. 20, No. 11 APRIL—MAY 1953 Complete No. 384



*Contract of contracting corporation which was subject to licensing as a general contractor, but which was not licensed as such, ruled void and recovery thereon denied . . .* *Page 215*

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APRIL—MAY 1953

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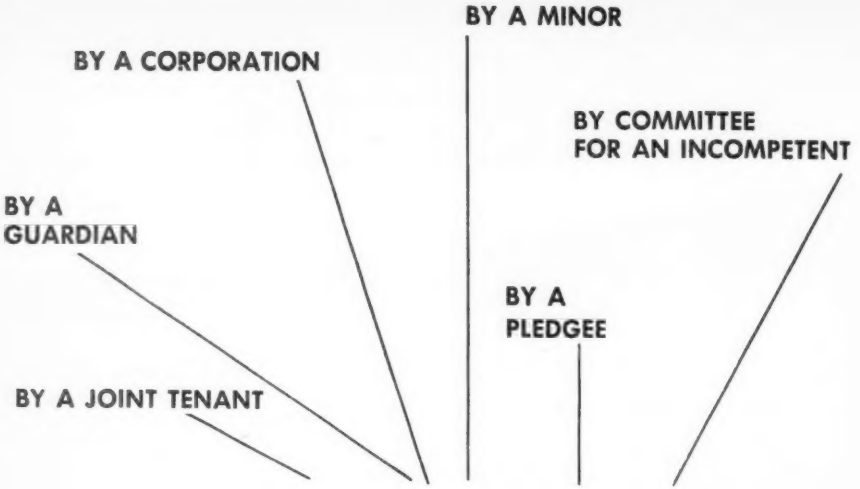
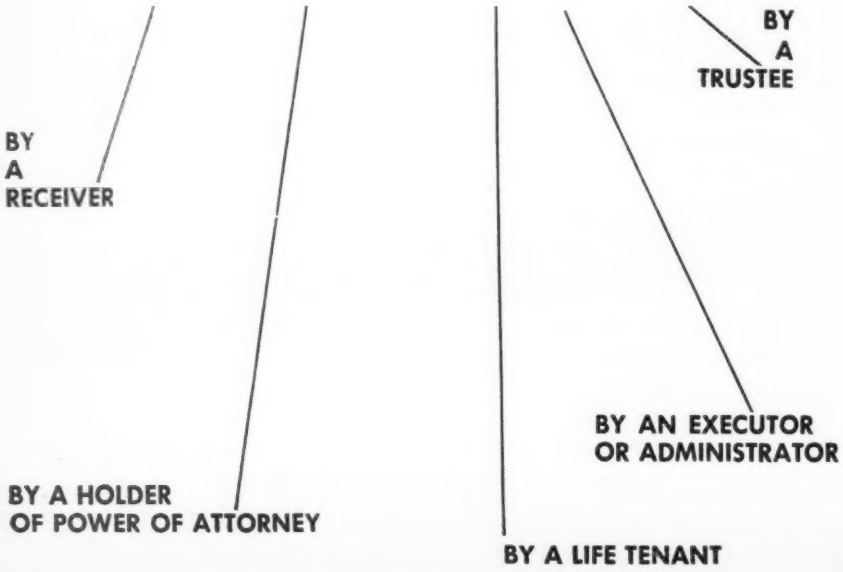
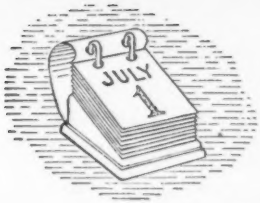
### Recent Decisions




For each different type of request for a stock transfer: a different set of protective measures. It is the *only* way to protect the owner of the stock, the transferee *and* the corporation.

It is another reason why the examination of stock certificates presented for transfer should be entrusted only to those who are long-experienced in the intricacies involved: to C T. for example, and its more than half a century of experience.






# a decisive date

## *Wisconsin Corporations*

### Designation of Registered Office and Registered Agent

IT WILL BE NECESSARY for every Wisconsin corporation to have taken proper steps, before July 1, 1953, to designate a registered office and a registered agent in Wisconsin through the filing of a designation in the office of the Secretary of State, and the recording of a duplicate, certified by the Secretary of State, with the Register of Deeds of the county in which the registered office of the corporation is located, as required by the Wisconsin Business Corporation Law effective August 19, 1951.

Companies which have been incorporated under the Wisconsin Business Corporation Law since its effective date, August 19, 1951, have satisfied these requirements by designating a registered office and a registered agent in their articles which were filed with the Secretary of State and by recording a duplicate original of such articles, certified by the Secretary of State, with the Register of Deeds of the county in which the registered office is located.

Corporations incorporated in Wisconsin under the law in effect prior to August 19, 1951, *which have not already done so,* are required, on or before July 1, 1953, to file a form of designation of a registered office and a registered agent, executed in duplicate with the Secretary of State and to record the duplicate, certified by the Secretary of State, with the Register of Deeds of the county in which the registered office is located. At the close of 1951, the Secretary of State forwarded such a form of designation, Special Form 13, in triplicate, to all Wisconsin corporations, when supplying such corporations with blanks for the Annual Report. As a result, many corporations have already complied with these requirements.

### July 1 Operation of Business Corporation Law

On July 1, all Wisconsin business corporations will automatically become subject to the Wisconsin Business Corporation Law, now Chapter 180 of the Wisconsin Statutes, which was enacted by Chapter 731, Laws of 1951, and became effective August 19, 1951. The only filing required is that of the designation of registered office and registered agent, previously mentioned.

Many Wisconsin companies have already elected to become subject to this new Corporation Law, by complying with a procedure it has provided for that purpose, which continues to be available until July 1, 1953. These companies have filed two resolutions with the Secretary of State—one, adopted by the holders of two-thirds of the outstanding shares entitled to vote (unless their articles require a greater vote), indicating an election to become subject to the Law, and the other resolution, adopted by the board of directors, designating a registered office and registered agent. Duplicate originals of these resolutions, certified by the Secretary of State, have been recorded by such companies with the Register of Deeds of

the county in which the registered office is located. In those instances where the registered office was designated in a county other than that in which the original articles of incorporation were filed, duplicate originals of both resolutions, certified by the Secretary of State, were also recorded with the Register of Deeds of the county in which such articles were filed upon incorporation. Such articles were then recorded with the Register of Deeds of the county in which the registered office is located.

Where the registered office designated under the new Business Corporation Law by a company which was incorporated under the old law is in a county different from the county of "location" as fixed by its articles of incorporation, the Secretary of State has indicated that the designation must be recorded in the county of "location," as well as in the new county; and, in such case, the articles of incorporation and all amendments must be recorded in the new county.

## domestic corporations

### DELAWARE

**Request for receiver denied where there was no imminent danger of material loss, and other less stringent remedies were available.**

Plaintiffs, owners of 50% of the outstanding common stock of defendant Delaware company, the business of which had been handled as a family enterprise, filed a complaint in the Chancery Court, New Castle County, for the appointment of a receiver for the corporation, based upon the alleged fraud and gross mismanagement of its president. The latter was the husband of one of the plaintiffs, from whom he was separated. It was not alleged that the corporation was insolvent.

The court outlined its inherent powers to appoint a receiver for a solvent corporation by reason of fraud or gross mismanagement on the part of the officers where there is real, imminent danger of material loss which cannot otherwise be prevented, and circumstances under which this would not be exercised. Finding it doubtful that there was, in the present case, any such real, imminent danger of material loss to the stockholders as would be necessary before a receiver would be appointed, and that plaintiffs could avail themselves of other less stringent remedies, and that, if the facts should warrant, a court of equity would issue injunctive process for the protection of the rights of stockholders, the court saw no necessity for the appointment of a receiver and granted a motion to dismiss the complaint.

*Zuchowski et al. v. Boxwood Coal Corporation*, 93 A. 2d 119. Herman Cohen of Wilmington, for plaintiffs. Leonard G. Hagner, for defendant. Commerce Clearing House Court Decisions Requisition No. 485499.

## Charter provision permitting counting of interested directors for quorum purposes, in order to take action prerequisite to submission of proposed merger for stockholder approval, ruled lawful.

In *Sterling et al. v. Mayflower Hotel Corporation et al.*, 89 A. 2d 862, (The Corporation Journal, August-September, 1952, page 124), the Court of Chancery held lawful an article of a Delaware charter which permitted the counting of interested directors for quorum purposes, in order to take action prerequisite to the submission of a proposed merger for stockholder approval. Upon appeal, this ruling has been affirmed by the Supreme Court of Delaware.

In this action, the plaintiffs had sought a preliminary injunction restraining the consummation of a merger between the two defendant Delaware corporations. Plaintiffs' principal contention in both courts was that the terms of the merger were unfair to the Mayflower corporation's minority stockholders. The State Supreme Court after considering all of plaintiffs' objections to the fairness of the proposed merger, found itself in accord with the Chancellor's conclusion that no fraud or unfairness had been shown.

The court also considered a contention that no quorum was present at a meeting of the board of directors of the Mayflower corporation at which the merger was approved. Six of the nine directors were present. Under the by-laws, a quorum consisted of five directors. Plaintiffs contended that three of the six directors present were, by reason of some interest in or connection with the other corporation, disqualified for quorum purposes. Defendants answered that the Mayflower corporation's certificate of incorporation permitted the counting of interested directors for quorum purposes. Plaintiffs replied that the provision was to that effect invalid. Finding no basis for declaring it unlawful, the court remarked: "We see no reason to hold that stockholders may not agree that interested directors may be counted toward a quorum. Such a provision does no more than to permit the directors to act as a board, leaving untouched questions of alleged unfairness or inequity that it is the duty of the courts in a proper case to resolve. Interlocking directorates are not in themselves unlawful and a provision such as here assailed, which merely facilitates the functioning of the board, cannot be said to constitute a contract contrary to public policy."

*Sterling et al. v. Mayflower Hotel Corporation and Hilton Hotels Corporation*, 93 A. 2d 107. S. Samuel Arsht of Morris, Steel, Nichols & Arsht of Wilmington, and Stephen S. Bernstein of McLaughlin & Stern of New York City, attorneys for plaintiffs below, appellants. William S. Potter of Berl, Potter & Anderson of Wilmington, and Claude A. Roth of Chicago, attorneys for Hilton Hotels Corporation, defendant below, appellee. Aaron Finger of Richards, Layton & Finger of Wilmington, and William J. Friedman and Maurice Rosenfield of Chicago, attorneys for Mayflower Hotel Corporation, defendant below, appellee. Commerce Clearing House Court Decisions Requisition No. 487077.

### Profit-sharing plan, approved by stockholders, ruled valid by Chancery Court.

In *Kerbs et al. v. California Eastern Airways, Inc.*, 90 A. 2d 652, reargument denied, 91 A. 2d 62, (The Corporation Journal, October—November, 1952, page 144), the Supreme Court of Delaware held a profit-sharing plan, not legally adopted by the directors, to be voidable and subject to ratification by the stockholders. That court indicated that if there was effective ratification had by the stockholders, the profit-sharing plan would be valid. A hearing on the ratification by the stockholders was held by the Court of Chancery, New Castle County, and the Chancery Court has concluded that the profit-sharing plan "was effectively ratified and is therefore valid." In doing so, the court ruled against the plaintiffs' contentions that there was no effective ratification because (1) The proxies solicited by the management contained false and misleading statements as to material facts and omitted to state a material fact; (2a) The vote was close and was carried only because the votes of the interested beneficiaries were counted in favor of the plan; (2b) The management utilized professional solicitors to obtain proxies.

*Kerbs et al. v. California Eastern Airways, Inc.*, Court of Chancery, New Castle County, January 20, 1953. Arthur G. Logan of Logan, Marvel & Boggs of Wilmington, for plaintiffs. David F. Anderson of Berl, Potter & Anderson of Wilmington, and Walter R. Barry, James E. Hughes and George F. Mason of Coudert Brothers, of New York City, for defendant. Commerce Clearing House Court Decisions Requisition No. 487980.

## NEW YORK

### Remedy of minority stockholders by way of appraisal of stock, where entire assets were to be sold, ruled exclusive remedy.

Plaintiffs, minority stockholders and voting trust certificate holders sued for a permanent injunction restraining defendant corporation, which operated a hotel in New York City, from selling its business, property and assets to a wholly-owned subsidiary of another corporation. Plaintiffs moved for a temporary injunction and defendant moved to dismiss the complaint for legal insufficiency. Certain voting trust certificate holders moved to intervene as parties plaintiff. The complaint contained allegations that the purchase price was not adequate, and that the proposed sale was not in the best interests of the corporation or of its stockholders, but was rather in the interests of those who controlled both the defendant and the prospective purchaser; also that the purpose was to eliminate or "freeze out" the scattered minority stockholders. Bad faith was charged generally to defendant's management, but otherwise the classic elements of fraud were not spelled out.

"The question," said the Supreme Court, Special Term, New York County, Part III, "is whether minority stockholders and certificate holders, situated as these plaintiffs are, are limited in remedy to an appraisal of their stock under Sections 20 and 21 of the Stock Corporation Law or may they avail themselves of remedies in

equity attacking the sale as illegal and fraudulent." After an examination of pertinent decisions, the court granted the defendant's motion to dismiss the complaint, regarding the statutory remedy by way of appraisal available to plaintiffs as exclusive.

As to whether the right of appraisal existed in behalf of voting trust certificate holders, the court indicated that it existed, unless the stockholder had waived such right by consenting to the action out of which he sought an appraisal by having granted such consent to the trustee in the original voting trust agreement, or by consenting to such action later at a meeting of certificate holders.

*Blumenthal et al. v. Roosevelt Hotel, Inc.*, 115 N. Y. S. 2d 52. Geller & Saslow of New York City, for plaintiffs. Humes, Smith & Andrews of New York City for Wm. H. B. Simpson, Kate S. McArver Simpson, Lee M. Fallaw and Greenville Bargain House, applicants to intervene as parties plaintiff. Paul Weiss, Rifkind, Wharton & Garrison of New York City for defendant.

## WASHINGTON

### Stockholder and director denied right to examine corporate books and records where hostile or improper motive was demonstrated.

This was a mandamus action, brought by a minority stockholder and director of two corporations, to compel the officers of the corporations to make certain corporate books and records available to plaintiff or her accountants for inspection. The corporations were a company and its wholly-owned subsidiary. Both were engaged in the manufacture and marketing of an asthma remedy. Plaintiff owned 100 shares of the 650 shares outstanding in the parent company. The remaining 550 shares were held by the principal defendant, in trust for the plaintiff's two minor children, of whose estates he was also guardian. Since that defendant's appointment as trustee in 1945, he had had effective control of the corporations. With the approval of the court, he had elected himself a director and president of both corporations.

The plaintiff and her accountants had been granted broad authority to examine the books and records of the corporations, upon request. It was when she asserted, as a stockholder, a desire to have an analysis made of sales, by area and method of marketing, that defendants denied access to the books and records which related to market practices, sales and customers. Their reason given for refusing access to such books and records was that plaintiff had a scheme to interfere with, harass and sabotage the business by contacting distributors and customers, and by making information regarding the business available to competitors. The lower court had found evidence to substantiate this charge and its judgment dismissing the suit, with prejudice, was, upon appeal, affirmed by the Supreme Court of Washington on the same grounds.

A contention of plaintiff that, as a director of the corporations, she had an absolute and unqualified right to examine the corporate books and records was answered by the court with the observation that "there is no statute

in this state specifying the rights of directors relative to the examination of such books and records." The court concluded that "a director may be denied the right to examine corporate records where it is shown that he has a hostile or improper motive."

*State ex rel. Paschall v. Scott et al.*, 247 P. 2d 543. H. Joel Watkins, of McWalter & Compass of Seattle, for appellant. Elvidge & Watt of Seattle, for respondents.


# foreign corporations

## MINNESOTA

**Additional activities on part of agent of foreign company, who solicited orders filled through interstate commerce, held to support service upon company effected by serving the agent.**

Defendant Massachusetts corporation, not licensed in Minnesota, sold machines and tools through a resident of Minnesota named Rice, upon whom service upon it had been made, which it sought to have quashed, in an action against it for breach of contract by one of its Minnesota customers. The Minnesota representative upon whom service had been effected was designated by defendant as its "service representative in Minnesota" and was its sole representative in the state. He solicited orders from customers in neighboring states also, all orders being sent to the Massachusetts office for approval and filling by shipment to the purchaser from that state. He also performed other services for the company, such as instructing customers in the use of defendant's products, investigating alleged breaches of warranty or trouble in the operation of machines sold, securing replacements for defective parts and handling of investigations of accounts in arrears and making recommendations. The United States District Court, District of Minnesota, Fourth Division, denied defendant's motion to quash the service, remarking: "That the corporate presence of the defendant is here within the teachings of the Minnesota decisions seems reasonably free from doubt." One of these decisions quoted contained these words: "While it is established that an agent's presence here for the solicitation of orders alone is insufficient to establish the presence of a foreign corporation here the rule 'readily yields to slight additions.'" To this the Federal court added: "The 'additions' reflected on this showing would seem sufficient to justify a finding that defendant was present here at the time of this service and that Rice was its proper agent for the service of such process."

*Jensen et al. v. Van Norman Co.*, 105 F. Supp. 778. Dorsey, Colman, Barker, Scott & Barber by Leavitt R. Barker and Peter Dorsey of Minneapolis, for defendant in support of motion. Heinrich J. Kuhlman of Minneapolis, for plaintiff in opposition thereto.

## NEW YORK

### Jurisdiction ruled proper by state courts of suit involving validity of amendments to by-laws of Ohio company calling for surrender and exchange of corporation's stock.

"Plaintiff, an Ohio corporation, by amendments to its charter and by-laws, created in its favor a prior right of purchase of, and a lien against, shares of its stock outstanding and in the hands of stockholders. A resolution of its board of directors, adopted in accordance with the corporate charter and by-laws and pursuant to Ohio law, directed all stockholders to surrender their certificates of stock in exchange for new certificates bearing legends referring to the purchase and lien rights. Defendant, a New York corporation and a stockholder of plaintiff, having failed to comply with that resolution, plaintiff commenced this action to compel it to submit its certificates for the appropriate indorsements. Defendant, challenging the validity of the by-law amendment, made a motion, under rule 106 of the Rules of Civil Practice, to dismiss the complaint for insufficiency."

The plaintiff asserted defendant was not amenable to service of process in Ohio and, unless it appeared voluntarily in that state, could not be served there and, also, that the transfer meanwhile of the stock certificates held by defendant to a third person would render the charter and by-laws amendments ineffectual against the transferee and would defeat or impair plaintiff's rights. Defendant, although it indicated that it would not appear voluntarily in Ohio or accept the jurisdiction of its courts even if plaintiff were to institute proceedings in that state, still insisted that the validity or invalidity of the amendments in question should be decided by the Ohio courts.

The New York Court of Appeals concluded that it would, under the circumstances, be unfair and unjust to close the state courts to the plaintiff and to relegate it to a forum wherein defendant could not be served with process and that, therefore, the courts of New York should not decline jurisdiction. The court denied a motion to dismiss the complaint, without prejudice, however, to the right of defendant to contest the validity of the amendments in the courts of Ohio, or in such other manner, consistent with the ends of justice, as the trial court, sitting in equity, might find appropriate.

*Royal China, Inc. v. Regal China Corporation,* 304 N. Y. 309, 107 N. E. 2d 461. Jonas J. Shapiro and Janet Perlman of New York City, for appellant. Isidor J. Kresel, Harold I. Meyerson and Irving L. Weinberger of New York City, for respondent.

## OKLAHOMA

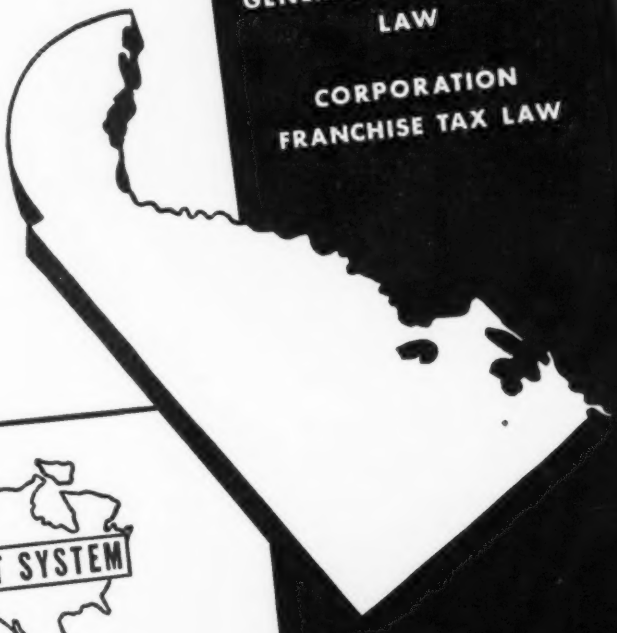
### Service set aside where made upon treasurer of corporation, without first attempting to serve statutory agent or certain other officers, specially grouped by statute, of whom the treasurer was not one.

Service upon defendant Kentucky corporation, qualified in Oklahoma, in a suit in the District Court of Delaware County, was attempted by the Sheriff

# DELAWARE

## GENERAL CORPORATION LAW

## CORPORATION FRANCHISE TAX LAW




as rearranged and revised in Title 8, Delaware Code of 1953

The Corporation Trust Company
CT Corporation System
and Associated Companies

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of Tulsa County by delivering a certified copy to the company's treasurer in Tulsa County. The trial court overruled defendant's motion to quash the service, defendant producing evidence of the appointment of an agent for the service of process in the state. Upon trial, the jury returned a verdict for plaintiff and the company appealed.

The Supreme Court of Oklahoma referred to the pertinent statute, 12 O. S. 1951, Section 163, directing service against a corporation to be attempted first upon "the president, mayor, chairman of the board of directors, or trustees, or other chief officer or upon an agent duly appointed to receive service of process, or if its chief officer is not found in the county," upon other designated officers, of whom the treasurer was one. The sheriff's return negatived the making of any effort by the plaintiff to obtain service upon the state agent admittedly appointed by and acting for defendant. The court noted that such an agent was made one of the members of the first class of persons designated in Section 163, upon whom service might be made. The higher court, reversing and remanding, held that the trial court erred in overruling defendant's motion to quash service and return of summons, emphasizing the principle laid down in prior decisions "that service upon the second class of persons specified in the law is not valid unless it is shown that the service could not be had upon those designated in the first class."

*Mid-Continent Petroleum Corporation v. Brewer,* 248 P. 2d 1039. David H. Sanders of Tulsa and R. A. Wilkerson of Pryor, for plaintiff in error. Riley Q. Hunt of Jay, for defendant in error.

## TEXAS

### Federal District Court permits unlicensed foreign corporation to maintain suit, based on diversity of citizenship, for recovery on contract involving sale and installation of plant in interstate commerce.

Plaintiff New York corporation, not licensed in Texas, sought to recover an amount remaining due on a contract for certain lighting paraphernalia which was fabricated and shipped from its plant in New York City to Texas for installation, and connection. The Texas work was done under the direction of plaintiff's engineer, but the actual labor was performed by employees hired by defendant and paid for by the defendant, a resident of Texas. The United States District Court, Northern District Texas, Dallas Division, found from the testimony that plaintiff was not doing intrastate business in Texas at the time of the shipment of the apparatus and its installation, but was engaged in interstate commerce and had no agent in Texas.

The court, after an examination of the decisions of the courts of Texas, applied the rule laid down in those cases where there was an interstate contract for the sale of a complicated plant, to be assembled under the supervision of an expert to be sent by the seller, in which it was held that the installation services were germane to the transaction of an interstate contract and did not involve the doing of local business subjecting the seller to regulations of Texas concerning foreign corporations.

*Wandel Western, Inc. v. Caraway,* 105 F. Supp. 633. Ungerman, Hill & Ungerman of Dallas, for plaintiff. Thompson, Knight, Wright & Simmons of Dallas, for defendant.

# taxation

## ILLINOIS

**Tax imposed under ordinance licensing local carters ruled inconsistent with Commerce Clause, as applied to contract hauler engaged in intracity, intrastate and interstate traffic, where different types of business were inseparable.**

In *City of Chicago v. The Willett Co.*, 406 Ill. 286, 94 N. E. 2d 195, (The Corporation Journal, June, 1951, page 353), the Illinois Supreme Court held that a Chicago ordinance licensing local carters was not applicable to a contract hauler engaged in intracity, intrastate and interstate traffic, where the nature of the arrangements was such that the different types of commerce could not be separated. A petition for a writ of certiorari was subsequently granted by the Supreme Court of the United States and the judgment vacated and the case remanded to the Illinois Supreme Court for clarification whether the judgment rested upon an adequate and independent state ground or whether the decision of a federal question was necessary to the judgment rendered. (71 S. Ct. 734, 853.) The State court thereupon stated that its decision was based upon the uncontested evidence that the plaintiff carrier's interstate, intrastate and intracity business was inseparable and, for this reason, the ordinance though valid, could not be applied to the carrier involved. (*City of Chicago v. The Willett Co.*, 101 N. E. 2d 205.) A second petition for a writ of certiorari was granted and the cause was argued before the Supreme Court of the United States on October 17, 1952.

The Supreme Court of the United States has reversed the judgment of the Illinois Supreme Court. The higher court remarked that the decisive and central fact in the case was that the carrier's business had, as much as any transportation business can have, a home, and that that home was Chicago. To the extent that the business was not confined within the city's limits, it revolved around the city, being fed by terminals which the city provided. It was regarded as benefitting from the city's public services and receiving the city's protection continuously. "In the circumstances," concluded the highest court, "a tax of reasonable proportions such as the one in question not shown in fact to be a burden on interstate commerce, is not inconsistent with the Commerce Clause."

*City of Chicago v. The Willett Co.*,* Supreme Court of the United States, February 9, 1953; Docket No. 23. Commerce Clearing House Court Decisions Requisition No. 489082.

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* The full text of this opinion is printed in the **State Tax Reporter, Illinois, page 5130.**

## OKLAHOMA

### Qualified corporation, owning property in state used only in furtherance of interstate commerce, ruled not subject to state income tax.

Plaintiff corporation was assessed for income taxes for the years 1944 to 1947 inclusive, which, after a hearing before the Tax Commission, were paid under protest and an appeal taken to the Oklahoma Supreme Court. Plaintiff was a Delaware company, qualified to do business in Oklahoma, with its principal place of business in Louisiana, owning interconnected systems of power generating stations, transmission lines and distribution systems for the transmission and sale of electric power and energy, which it sold in Arkansas, Louisiana and Texas. It owned and operated a transmission line extending from the high tension terminals of the substation of another company, at a point in Oklahoma, across that state to plaintiff's substation in Arkansas, 137 miles being in Oklahoma and 27 miles being in Arkansas. That part of the line which was within Oklahoma was the only property in that state owned by the plaintiff, which purchased energy from the Oklahoma company and transmitted it to plaintiff's substation in Arkansas, the plaintiff having no customers in Oklahoma and no office or employees there. The electric energy so purchased and transmitted became a part of the mass of electric power and energy sold in Arkansas, Louisiana and Texas. Plaintiff had no income in Oklahoma.

The court, considering pertinent cases, concluded that on the record it was required to hold the plaintiff was engaged exclusively in interstate commerce. Continuing, the court observed: "This case presents the question as to whether the Commission has the legal power or authority to assess an income tax upon the income of a non-resident, where such income is obtained only in states other than Oklahoma, when such non-resident transacts no intrastate business and receives no income within this state. We think that such power does not exist and that it is not within the purview of the Oklahoma Act." The court also remarked that "the mere ownership of property within the state, standing alone, is not sufficient to support the levy and collection of an income tax." The order of the Commission was reversed, with directions to reimburse plaintiff for all sums paid under protest.

*Southwestern Gas and Electric Co. v. Oklahoma Tax Commission,** Oklahoma Supreme Court, November 18, 1952. Richard L. Arnold of Arnold & Arnold, of Texarkana, Ark., and Lee B. Thompson of McInnis, Thompson & Sullivan of Oklahoma City, Okla., for the plaintiff. R. F. Barry, W. F. Speakman and E. J. Armstrong of Oklahoma City, for the defendant. Commerce Clearing House Court Decisions Requisition No. 484135.

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* The full text of this opinion is printed in the **State Tax Reporter**, Oklahoma, page 1709.

## PENNSYLVANIA

### Validity of 1951 Corporation Income Tax Law upheld by county court.

Plaintiff Virginia corporation challenged the constitutionality of the Corporation Income Tax Act of 1951, Act of August 24, 1951, P. L. 1417, as amended, as applied to it. That act complements the Corporation Net Income Tax Act of 1935. It taxes income not reached by the 1935 act of corporations deriving income from sources within Pennsylvania, regardless of whether any activities of the corporation are "carried on in intrastate, interstate or foreign commerce." Plaintiff corporation was engaged in the business of transporting as a common carrier exclusively in interstate commerce. No business other than such commerce was carried on in Pennsylvania, where it engaged in interstate transportation by motor carriers on the highways of Pennsylvania over irregular routes, pursuant to a certificate of public convenience issued by the Interstate Commerce Commission.

The Court of Common Pleas of Dauphin County concluded, after an exhaustive consideration of pertinent decisions of the Supreme Courts of the United States and of Pennsylvania, that the tax was valid constitutionally and ordered the plaintiff's bill of complaint dismissed.

*Roy Stone Transfer Corporation v. Messner,** Court of Common Pleas, Dauphin County, February 24, 1953. Commerce Clearing House Court Decisions Requisition No. 490619.

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* The full text of this opinion is printed in the **State Tax Reporter,** Pennsylvania, page 11,098.

## VIRGINIA

### Contract of contracting corporation which was subject to licensing as a general contractor, but which was not licensed as such, ruled void and recovery thereon denied.

"The question raised for decision by this case," observed the Supreme Court of Appeals of Virginia, "is whether a contractor who is not licensed and registered as a contractor under Chapter 7, Title 54, Code of Virginia of 1950, Secs. 54-113 to 54-145 inclusive, may recover the balance claimed to be due for work performed, the total cost of which was more than $20,000." These sections provide for the registration of contractors with the State Registration Board for Contractors. It is made unlawful for any person to engage in, or offer to engage in, general contracting or subcontracting in the state, unless licensed, and any violation of the statute is punishable as a misdemeanor. The appellee, the real party defendant in interest, had been successful in the trial court in having appellant's bill dismissed, upon alleging that the appellant was not entitled to maintain its suit, since it had not complied with this registration statute.

The court, in affirming the lower court's ruling that the bill of complaint should have been dismissed, upheld the validity of the statute and its application to the appellant by reason of contracting activities carried on in the state. The fact

that appellant had been licensed under another statute as an electrical contractor was regarded as immaterial, as the two statutes were not mutually exclusive.

"The appellant," said the court, "urges that its failure to register does not render its contract void and that it is entitled to recover for the reasonable value of the services rendered and materials supplied. The blunt answer to this final point is that a contract made in violation of a police statute enacted for the public protection is void and there can be no recovery thereon."

*F. S. Bowen Electric Co., Inc. v. Foley et al.*, 72 S. E. 2d 388. J. Foster Hagan of Arlington and Maxwell A. Ostrow of Washington, D. C., for appellant. Lawrence W. Douglas, James H. Simmonds and Oren R. Lewis of Arlington, for appellant.

## state legislation

*The following legislation has been enacted:*

**Massachusetts** — Chapter 32 has deleted the prohibition relating to corporate names of Massachusetts companies that "no business corporation, bank or insurance company shall have as a part of its corporate name the word 'Commonwealth,' 'State,' or 'United States'."

**North Dakota** — Senate Bill 62, Laws of 1953, has changed the due date of income tax returns of taxpayers filing returns on a calendar year basis from March 15 to April 15, beginning in 1953. A return is filed with the State Tax Commissioner at Bismarck. The extension also effects a change in the due dates of quarterly installment payments of calendar year taxpayers, where the amount due exceeds $10.00. Such installment payments will hereafter be due on or before April 15, July 15, October 15 and January 15.

**South Dakota** — Senate Bill 203, effective July 1, 1953, provides that tax claims of other states shall be enforceable in its courts as to those states which extend like comity in respect of the tax claims of South Dakota. The other states having reciprocal provisions are: Alabama, Arkansas, California, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Hampshire, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, Washington and Wisconsin.

**Utah** — Senate Bill 79 provides that, beginning with the quarterly period commencing January 1, 1953, sales and use tax returns will be required to be filed and paid quarterly, on or before the 30th day of the month next succeeding each calendar quarterly period, in lieu of being filed bi-monthly.

**Wyoming** — Personal property from without the state, consigned to a warehouse for storage or assembly within Wyoming in transit to a final destination without the state, is exempt from ad valorem taxation, provided it does not remain within the state for more than nine months. (S. B. 47, Laws of 1953.)

# appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

**FLORIDA.** Docket No. 287. *Polizzi v. Cowles Magazines, Inc.*, 197 F. 2d 74. (The Corporation Journal, February-March, 1953, page 192.) Service of process —doing business—jurisdiction. **Petition for writ of certiorari filed, August 20, 1952. Certiorari granted, October 20, 1952.** (73 S. Ct. 94.)

**ILLINOIS.** Docket No. 23. *City of Chicago v. The Willett Co.*, 406 Ill. 286, 94 N. E. 2d 195. (The Corporation Journal, June, 1951, page 353.) Municipal license tax on carters transporting property in intracity, intrastate and interstate commerce. **Petition for writ of certiorari filed, January 12, 1951. April 23, 1951: "Per curiam:** The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded to the Supreme Court of Illinois, for clarification by that court to show, in light of *Minnesota v. National Tea Co.*, 309 U. S. 551; *State Tax Comm. v. Van Cott*, 306 U. S. 511, whether the judgment herein rests on an adequate and independent state ground or whether decision of a federal question was necessary to the judgment rendered." (71 S. Ct. 734.) **Petition for rehearing denied, 71 S. Ct. 853.** (Upon remand for clarification, the Illinois Supreme Court stated that its decision in this case was based upon the uncontested evidence that the plaintiff carrier's interstate, intrastate and intracity business is inseparable. For this reason, the ordinance, though valid, cannot be applied to the carrier involved. *City of Chicago v. The Willett Co.*, 101 N. E. 2d 205.) **Petition for certiorari again filed, March 12, 1952. May 5, 1952:** "The motion to use the certified record in No. 493, October Term, 1950, is granted. Petition for writ of certiorari to the Supreme Court of Illinois granted and case transferred to the summary docket." (72 S. Ct. 1033.) **October 13, 1952.** "The motion to consider transcripts of record and briefs filed in prior causes as having been filed in this cause is granted." (73 S. Ct. 8.) **Argued, October 17, 1952. Reversed, February 9, 1953.** (See page 213.)

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* Data compiled from **CCH U. S. Supreme Court Bulletin**, 1952-1953.

# regulations and rulings

**Connecticut** — For the purposes of the franchise tax based on apportioned net income, a concern manufacturing in Connecticut but utilizing the services of a commission merchant to solicit for sale of the product in California, while storing the product in Nevada, the manufacturer retaining title, must assign all such sales to Connecticut. (Opinion of the Attorney General to the State Tax Commissioner, State Tax Reporter, Connecticut, ¶ 14-501.)

**Florida** — A corporation, in effect, exercises its corporate franchise and is subject to taxation where a charter is filed and the main purpose is to protect the corporate name. (Letter of Secretary of State, State Tax Reporter, Florida, ¶ 101.)

**Georgia** — The three-year statute of limitations on collection of income tax applies only to returns which contain all required information. Even if the information has been applied improperly in calculating the tax liability, no action may be taken after three years. (Opinion of Attorney General, State Tax Reporter, Georgia, ¶ 13-405.)

**Kentucky** — A municipal ordinance requiring a license fee of wholesalers making deliveries within the city is unconstitutional, as it applies to foreign corporations conducting an exclusively interstate business, for the reason that it imposes a direct burden on interstate commerce. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 30-002.)

**Minnesota** — When the term of corporate existence of a company which was organized defectively expires, it may file a certificate for the amendment of the articles of incorporation in question, assuming that since the expiration of its corporate existence it has conducted, and in good faith has transacted, business as a de facto corporation. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Minnesota, ¶ 4-004.)

**Nevada** — A foreign company, proposing to lease a warehouse in Nevada for the purpose of storing its products which are elsewhere manufactured and thence to distribute those products upon order from the warehouse to consumers, must qualify as a foreign corporation doing business in Nevada. Continued employment of capital and the continued maintenance of property and the entrance into contractual relationships, all of which will necessitate service by the state, constitute doing business. The character of an interstate commercial transaction is lost upon storage of the goods within the state. The "free port" law which excludes from taxation personal property in transit, is not involved, nor is the percentage of goods remaining in the original package. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Nevada, ¶ 2-012.56.)

**New York** — The business and activities of a district steam corporation and a gas and electric corporation are similar and incidental for the purposes of merger under Section 85 of the Stock Corporation Law. (Opinion of the Attorney General, New York Corporation Law Reporter, ¶ 10-647.)

# some important matters

*For April and May*

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

**Alabama** — Annual Franchise Tax due April 1 but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

**Alaska** — Returns of Tax withheld at the source due on or before April 30.—Domestic and Foreign Corporations.

**Arizona** — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

**Arkansas** — Corporation Income Tax Return and Returns of Information at the source due on or before May 1.—Domestic and Foreign Corporations.

**California** — Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

**Colorado** — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

License Tax due May 1.—Domestic and Foreign Corporations.

**Connecticut** — Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

**Delaware** — Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1952.

**District of Columbia** — Franchise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

**Indiana** — Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

**Iowa** — Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

**Kansas** — Income Tax Return due April 15.—Domestic and Foreign Corporations.

**Kentucky** — Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

**Louisiana** — Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

**Maryland** — Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due April 15.—Domestic and Foreign Companies.

**Maryland** — (Continued)

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Quarterly Returns of Tax Withheld at the source due on or before April 30.—Domestic and Foreign Companies.

**Massachusetts** — Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

**Missouri** — Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

**Montana** — Annual Statement due in April and May.—Foreign Corporations.

**New Jersey** — Franchise Tax Report and Tax due on or before April 15.—Domestic and Foreign Corporations.

**New Mexico** — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due May 1.—Domestic and Foreign Corporations.

**New York** — Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A, Tax Law) and one-half of tax due May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

**North Dakota** — Income Tax due April 15.—Domestic and Foreign Companies.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

**Oregon** — Excise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before April 30.—Domestic and Foreign Corporations.

**Pennsylvania** — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

**Rhode Island** — Semi-Annual Report to Department of Industrial Inspection during April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

Business Corporation Tax Return and Tax due on or before May 1.—Domestic and Foreign Corporations.

**South Dakota** — Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

**Texas** — Annual Franchise Tax due May 1.—Domestic and Foreign Corporations.

**United States** — Withholding Tax due on or before April 30.

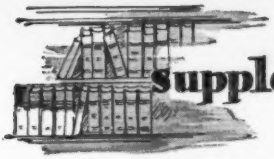
**Vermont** — Income (Franchise) Tax Return due on or before May 15.—Domestic and Foreign Corporations.

**Virginia** — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Income Tax due June 1.—Domestic and Foreign Corporations.

**West Virginia** — License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.



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*In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.*

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